

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS PENSION FUND, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS WELFARE  
FUND, NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS VACATION FUND, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS ANNUITY  
FUND, NEW YORK CITY DISTRICT COUNCIL  
OF CARPENTERS APPRENTICESHIP, JOURNEYMAN  
RETRAINING, EDUCATIONAL AND INDUSTRY  
FUND, NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS CHARITY FUND, and THE NEW  
YORK CITY AND VICINITY CARPENTERS LABOR  
MANAGEMENT COOPERATION FUND, by MICHAEL  
J. FORDE, and PAUL O'BRIEN, as TRUSTEES, AND  
MICHAEL J. FORDE AS EXECUTIVE SECRETARY-  
TREASURER, DISTRICT COUNCIL FOR NEW YORK  
CITY AND VICINITY, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA,

Plaintiffs,

-against-

RODGERS CONSTRUCTION & HOME IMPROVEMENT,

Defendant.  
-----X

STATE OF NEW YORK     )  
                                  ) ss:  
COUNTY OF NEW YORK    )

ANDREW GRABOIS, Esq. being duly sworn, deposes and says,

1.     I am associated with the firm of O'Dwyer & Bernstien, LLP, attorneys for  
plaintiffs ("Funds") in the above captioned action. I am familiar with all the facts and  
circumstances in this action.

08 CV 3799 (SAS)  
ECF CASE

**AFFIDAVIT OF COUNSEL  
IN SUPPORT OF  
DEFAULT JUDGMENT**

2. I submit this affidavit in support of plaintiffs' motion for default judgment against Rodgers Construction & Home Improvement ("Defendant"), confirming an arbitration award against the Defendant, dated March 24, 2008.

3. Upon information and belief Defendant is a corporation and not an infant, in the military or an incompetent.

4. Subject matter jurisdiction of this action is based upon Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §185, Sections 502(a)(3)(B)(ii), (d)(1), (e) and (g) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§1132(a)(3)(B)(ii), (d)(1), (e) and (g), Section 515 of ERISA, 29 U.S.C. §1145, and Section 9 of the Federal Arbitration Act, 9 U.S.C. §9.

5. Plaintiffs brought this action to collect unpaid employee benefit fund contributions from Defendant, which were due and owing to plaintiffs pursuant to a collective bargaining agreement ("Agreement") between the Defendant and the District Council for New York City and Vicinity, United Brotherhood of Carpenters and Joiners of America.

6. Defendant has failed to remit benefit fund contributions to the Funds for hours worked by employees as required under the Agreement.

7. Pursuant to the arbitration clause of the Agreement, the dispute was submitted to arbitration to Roger Maher, the duly designated impartial arbitrator. Thereafter, upon due notice to all parties, the arbitrator held a hearing and rendered his award, in writing, dated March 24, 2008 determining said dispute. Upon information and belief, a copy of the award was sent to the defendant.

8. The arbitrator found that Defendant was required to pay to the Funds \$49,228.21, plus interest at the rate of ten percent (10%) per annum from the date of the award. (A copy of

the award is annexed hereto as Exhibit "A").

9. Plaintiffs seized an escrow in the amount of \$7,477.99 towards the principal amount due. Otherwise, the defendant has failed to abide by the award.

10. Plaintiffs commenced this action on April 22, 2008 by filing a summons and complaint. (A copy is annexed hereto as Exhibit "B"). Plaintiffs subsequently served the summons and complaint together with the Judge's rules upon Defendant by delivering one (1) true copy of the same to the Secretary of the State of New York on April 28, 2008, pursuant to Section 307 of New York Business Corporation Law and an affidavit of service was filed with the Court on May 14, 2008. (A copy is annexed hereto as Exhibit "C"). Plaintiffs completed service by mailing one (1) true copy thereof by registered mail with return receipt requested at the last known address of the corporation known to the plaintiffs on April 25, 2008 and an affidavit of service was filed on May 14, 2008. (A copy is annexed hereto as Exhibit "D").

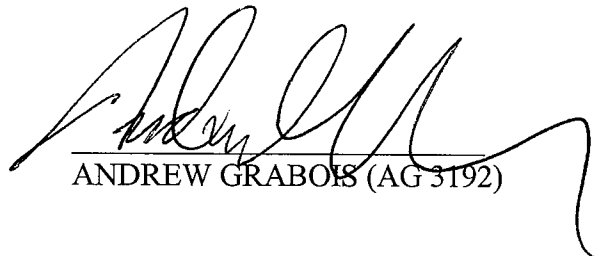
11. Defendant has failed to answer or appear or move with respect to the complaint and the time to do so has expired. (A copy of the Clerk's Certificate is annexed hereto as Exhibit "E").

12. Plaintiffs seek a default judgment and order against Defendant and in favor of plaintiffs as follows:

- a. confirming the arbitrator's award;
- b. awarding judgment for the plaintiffs and against Defendant in the principal amount of \$41,750.22;
- c. interest of ten percent (10%) per annum on that amount from the date of said award, pursuant to the arbitrator's award;
- d. attorneys' fees and costs arising out of this action as determined by the

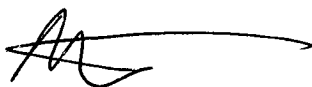
court. (An Affidavit of Services is annexed hereto as Exhibit "F" and a proposed Default Judgment is annexed hereto as Exhibit "G");

e. such other and further relief as this Court may deem just and proper;



ANDREW GRABOIS (AG 3192)

Sworn to before me this  
27<sup>th</sup> day of May, 2008



NOTARY PUBLIC

ROBERT DUNNE  
Notary Public, State of New York  
No. 02DU6115098  
Qualified in New York County  
Commission Expires August 30, 2008

**OFFICE OF THE IMPARTIAL ARBITRATOR**

**ROGER E. MAHER**  
**IMPARTIAL ARBITRATOR**

17327

-----X  
**In the matter of the Arbitration between**

The New York District Council of Carpenter Pension Fund, New York City District Council of Carpenters Welfare Fund, New York City District Council of Carpenters Vacation Fund, New York City District Council of Carpenters Annuity Fund, New York City District Council of Carpenters Apprenticeship, Journeyman, Retraining, Educational & Industry Fund, New York City District Council of Carpenters Charity Fund, The New York and Vicinity Carpenters Labor Management Cooperation Fund, by Michael J. Forde and Paul O'Brien, as Trustees and Michael J. Forde as Executive Secretary-Treasurer, District Council for New York City and Vicinity, United Brotherhood Carpenters and Joiners of America.

**Petitioners,**

**MODIFIED  
OPINION AND  
DEFAULT AWARD  
OF ARBITRATOR**

-against-

**Rodgers Construction & Home Improvement,  
Respondent**

-----X  
Pursuant to the provisions of the Collective Bargaining Agreement between the Respondent-Employer and the District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America, effective 07/01/2001, and the designation of the undersigned as Impartial Arbitrator to determine disputes concerning claim arising from payments due to the Benefit Funds described in said written contract, the undersigned Arbitrator was called upon to hear and determine a controversy involving claims by the Petitioners for sums of money allegedly due to said Benefit Funds by the Respondent.

In accordance with the terms of the underlying written agreement, the Civil Practice Law and Rules of the State of New York and the herein Notice of Intention to Arbitrate dated 01/15/2008, the undersigned by Notice of Hearing dated 01/23/2008, scheduled a hearing for 02/29/2008, in order to determine the dispute between the parties.

### OPINION

On 02/29/2008, at the place and time designated at the aforesaid Notice of Hearing, Steven Kasarda, Esq., appeared on behalf of the Petitioners and submitted proof that the Respondent-Employer had legally sufficient notice of this proceeding and the claims against. There being no appearance on behalf of the Respondent nor any request for an adjournment or extension of time to appear, the undersigned found the Respondent to be in default and proceeded to hear the testimony and take evidence on the claims of the Petitioners.

The uncontroverted testimony and evidence established that the Respondent was bound to a Collective Bargaining Agreement with the New York City District Council of Carpenters and said Agreement became effective 07/01/2001. This Contract obligated the Respondent-Employer to make certain payments to Fringe Benefit Trust Funds on behalf of all its carpenter employees pursuant to schedules set forth in the Agreement. In addition, it authorized the Petitioners to conduct an audit of the Respondent-Employer's books and records in order to verify that all the required contributions were made to each of the aforesaid Fringe Benefit Trust Funds maintained by the Petitioners. In accordance with this auditing provision, an accountant employed by the Petitioners, with the consent of the Respondent, performed an audit of the books and records of the Respondent herein.

The testimony of the auditor employed by the Petitioners, established that an audit of the books and records of the Respondent had been performed and delinquencies were discovered in the amount of contributions due the aforesaid Funds during the period of 10/29/2002 through 12/31/2003. The testimony further revealed that a copy of the Summary Report of this audit had been forwarded to the Respondent. Thereafter the Petitioners duly demanded payment and upon the Respondent's failure to comply this proceeding was initiated.

The testimony of the auditor set forth the accounting method employed during the course of the audit and the computation of the amount of each alleged delinquency. The Summary Report of the audits conducted were also received in evidence. The total amount of the delinquency and interest was Forty Nine Thousand Two Hundred Twenty Eight & 21/100 dollars (\$ 49,228.21). The Petitioners requested that the monies due (including delinquency assessment and interest) plus their Attorney's fee, and the fee of the Arbitrator and court costs be imposed upon the Respondent all as required and set forth in the underlying written contract. Testimony computing these amounts was received in evidence.

### AWARD

Upon the substantial and credible evidence of the case as a whole I find the Respondent-Employer, Rodgers Construction & Home Improvement, is delinquent in Fringe Benefit monies due under its written agreement and is also obligated to pay delinquency assessment and interest on its delinquency, plus an attorney's fee to the Petitioners and the fee of the undersigned Arbitrator, and court costs all in accordance with the terms and provisions of the Collective Bargaining Agreement in the following amounts:

|                            |                     |
|----------------------------|---------------------|
| Welfare Fund.....          | \$ 8,333.60         |
| Pension Fund.....          | \$ 5,390.27         |
| Annuity Fund.....          | \$ 4,742.40         |
| Vacation Fund.....         | \$ 4,012.80         |
| AJREI Fund.....            | \$ 331.45           |
| School Fund.....           | \$ 0.00             |
| Labor Management Fund..... | \$ 142.05           |
| IBC Fund.....              | \$ 56.82            |
| Charity Fund.....          | \$ 37.88            |
| Interest.....              | \$ 22,256.10        |
| Court Costs.....           | \$ 375.00           |
| Attorney's Fee.....        | \$ 1,500.00         |
| Arbitrator's Fee.....      | \$ 500.00           |
| Audit Fee .....            | \$ 1,450.00         |
| Promo Fee .....            | \$ 99.84            |
| <b>TOTAL</b>               | <b>\$ 49,228.21</b> |

Wherefore, the Trustees of the New York City District Council Carpenters Benefit Funds are awarded an aggregate amount of Forty Nine Thousand Two Hundred Twenty Eight & 21/100 dollars (\$ 49,228.21) which is to be paid forthwith by Rodgers Construction & Home Improvement with interest to accrue at the rate of 10% from the date of this award.

Dated: Brooklyn, New York  
March 24, 2008

---

ROGER E. MAHER, Arbitrator

To: Steven Kasarda, Esq.  
New York City District Council Carpenters Benefit Funds  
395 Hudson Street  
New York, New York 10014

Thomasina Caba  
New York City District Council Carpenters Benefit Funds  
395 Hudson Street  
New York, New York 10014

Rodgers Construction & Home Improvement  
518 North Cascade Street  
New Castle, PA 16101  
Joseph Rodgers, Pres.



**AFFIRMATION**

STATE OF NEW YORK )  
COUNTY OF KINGS )

The undersigned under penalty of perjury affirms that he is the Arbitrator in the within proceeding and signed same in accordance with arbitration law of the State of New York.

  
\_\_\_\_\_  
**ROGER E. MAHER**

**JUDGE SCHEINDLIN**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS PENSION FUND, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS WELFARE  
FUND, NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS VACATION FUND, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS ANNUITY FUND,  
NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS  
APPRENTICESHIP, JOURNEYMAN RETRAINING,  
EDUCATIONAL AND INDUSTRY FUND, NEW YORK  
CITY DISTRICT COUNCIL OF CARPENTERS CHARITY  
FUND, UNITED BROTHERHOOD OF CARPENTERS AND  
JOINERS OF AMERICA FUND and THE NEW YORK CITY  
AND VICINITY CARPENTERS LABOR-MANAGEMENT  
CORPORATION, by MICHAEL J. FORDE, and PAUL O'BRIEN,  
as TRUSTEES, and MICHAEL J. FORDE AS EXECUTIVE  
SECRETARY-TREASURER, DISTRICT COUNCIL FOR NEW  
YORK CITY AND VICINITY, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA,

Plaintiffs,

-against-

RODGERS CONSTRUCTION & HOME IMPROVEMENT,

Defendant.

-----X  
TO:

Rodgers Construction & Home Improvement  
518 North Cascade Street  
New Castle, PA 16101

**YOU ARE HEREBY SUMMONED** and required to file with the clerk of this court and serve upon

O'DWYER & BERNSTIEN, LLP  
52 Duane Street  
New York, New York 10007  
(212) 571-7100

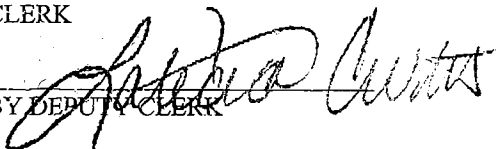
an answer to the complaint which is herewith served upon you, within **30 days** after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

**J. MICHAEL McMAHON**

CLERK

DATE

BY DEPUTY CLERK



08 CV  
**CIV 3799**  
SUMMONS

APR 22 2008

JOSEF SCHLAIN  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS PENSION FUND, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS WELFARE  
FUND, NEW YORK CITY DISTRICT COUNCIL OF  
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APPRENTICESHIP, JOURNEYMAN RETRAINING,  
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CORPORATION, by MICHAEL J. FORDE, and PAUL O'BRIEN,  
as TRUSTEES, AND MICHAEL J. FORDE AS EXECUTIVE  
SECRETARY-TREASURER, DISTRICT COUNCIL FOR NEW  
YORK CITY AND VICINITY, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA,

Plaintiffs,

-against-

RODGERS CONSTRUCTION & HOME IMPROVEMENT,

Defendant.  
-----X

Plaintiffs, (hereinafter also referred to as "Benefit Funds"), by their attorneys O'Dwyer & Bernstien, LLP, for their Complaint allege as follows:

**NATURE OF THE CASE**

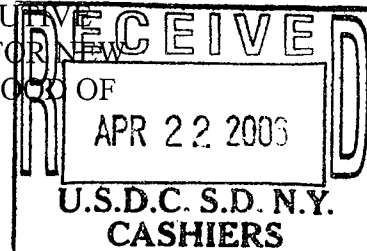
1. This is an action to confirm and enforce an Arbitrator's Award rendered pursuant to a collective bargaining agreement ("Agreement") between The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America ("Union") and Rodgers Construction & Home Improvement ("Employer").

**JURISDICTION**

08 CIV 3799

08 CV \_\_\_\_\_

**COMPLAINT**



2. This Court has subject matter jurisdiction over this proceeding pursuant to section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §185, sections 502(a)(3)(B)(ii), (d)(1), (e) and (g) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§1132(a)(3)(B)(ii), (d)(1), (e) and (g), section 515 of ERISA, 29 U.S.C. §1145, and section 9 of the Federal Arbitration Act, 9 U.S.C. §9.

3. Personal jurisdiction is based upon Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2).

### **VENUE**

4. Venue is proper in this district in that Plaintiffs' offices are located in this district.

### **PARTIES**

5. At all times relevant herein the Plaintiffs were jointly administered, multi-employer, Taft-Hartley Benefit Funds administered by trustees designated by a union and by employers, established and maintained pursuant to section 302(c)(5) of the LMRA, 29 U.S.C. §186(c)(5). Plaintiffs Forde and O'Brien are fiduciaries of the Benefit Funds within the meaning of ERISA sections 3(21) and 502, 29 U.S.C. §§1002(21) and 1132.

6. The Benefit Funds are employee benefit plans within the meaning of sections 3(1) and (3) of ERISA, 29 U.S.C. §1002(1) and (3) and are maintained for the purposes of providing health, medical and related welfare benefits, pension and other benefits to eligible participants and beneficiaries on whose behalf they receive contributions from numerous employers pursuant to collective bargaining agreements between the employers and the Union.

7. Upon information and belief defendant Rodgers Construction & Home Improvement is a foreign corporation not incorporated under the laws of the State of Pennsylvania with a principal place of business located at 518 North Cascade Street, New Castle, PA 16101.

8. The defendant is an employer within the meaning of section 3(5) of ERISA, 29 U.S.C. §1002 (5).

**FIRST CLAIM FOR RELIEF**

9. Defendant was bound at all relevant times by a collective bargaining agreement with the Union, which, by its terms, became effective July 1, 2001. Said Agreement provides, inter alia, that the defendant shall make monetary contributions to the Benefit Funds on the behalf of covered employees, and for the submission of disputes to final, binding arbitration.

10. A dispute arose during the period of the Agreement between the parties when the Employer failed to comply with obligations under the Agreement to make contributions for employees in the bargaining unit.

11. Pursuant to the arbitration clause in the Agreement, the dispute was submitted to arbitration to Roger Maher, the duly designated impartial arbitrator.

12. Thereafter, upon due notice to all parties, the arbitrator duly held a hearing and rendered his award, in writing, dated March 24, 2008 determining said dispute. Upon information and belief, a copy of the award was delivered to the defendant (A copy of the award is annexed hereto as Exhibit "A" and made part hereof).

13. The arbitrator found that Rodgers Construction & Home Improvement had failed to make contributions due to the Benefit Funds for the period October 29, 2002 through December 31, 2003, in the principal amount of \$49,228.21.

14. The arbitrator also found that Rodgers Construction & Home Improvement was required to pay interest on the principal amount due at the rate of 10% per annum from the date of the award.

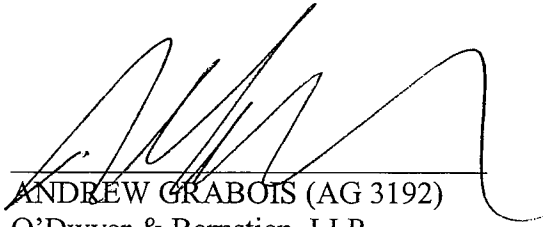
15. While \$7,477.99 of the \$49,228.21 ordered by the arbitrator has been collected,

defendant has failed to abide by the award and \$41,750.22 remains due and owing.

WHEREFORE, Plaintiffs demand judgment against defendant as follows:

1. For an order confirming the arbitration award in all respects;
2. For entry of judgment in favor of the Plaintiffs and against Rodgers Construction & Home Improvement ordering defendant to pay the Benefit Funds a total sum of \$41,750.22, plus 10% interest per year from the date of the award to the date of entry of judgment;
3. For attorneys' fees and costs of this action;
4. For such other and further relief as this court may deem just and proper.

Dated: New York, New York  
April 21, 2008



ANDREW GRABOIS (AG 3192)  
O'Dwyer & Bernstein, LLP  
Attorneys for Plaintiffs  
52 Duane Street  
New York, NY 10007  
(212) 571-7100

**AFFIDAVIT OF SERVICE THROUGH THE SECRETARY OF STATE**

Index # 08 CIV 3799

Purchased/Filed: April 22, 2008

STATE OF NEW YORK

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT

*The New York City District Council of Carpenters Pension Fund, et al*

Plaintiff

against

*Rodgers Construction & Home Improvement*

Defendant

STATE OF NEW YORK  
COUNTY OF ALBANY

SS.:

\_\_\_\_\_  
Jessica Miller, being duly sworn, deposes and says: deponent is over  
the age of eighteen (18) years; that on \_\_\_\_\_ April 28, 2008, at \_\_\_\_\_ 2:00pm, at the office of the  
Secretary of State of the State of New York in the City of Albany, New York deponent served the annexed

Summons and Complaint with Exhibits and Judges Rules

on

\_\_\_\_\_  
Rodgers Construction & Home Improvement, the

Defendant in this action, by delivering to and leaving with \_\_\_\_\_ Chad Matice,  
AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, personally at the  
Office of the Secretary of State of the State of New York, \_\_\_\_\_ 1 true copies thereof and that at the time  
of making such service, deponent paid said Secretary of State a fee of \_\_\_\_\_ 40 dollars; That said service  
was made pursuant to Section 307 Business Corporation Law.

Deponent further says that deponent knew the person so served as aforesaid to be the agent in the Office  
of the Secretary of State of the State of New York, duly authorized to accept such service on behalf of said  
defendant.

Description of the person served: Approx. Age: \_\_\_\_\_ 28 \_\_\_\_\_ Approx. Wt: \_\_\_\_\_ 200 \_\_\_\_\_ Approx. Ht: \_\_\_\_\_ 6'0"  
Color of skin: \_\_\_\_\_ White \_\_\_\_\_ Hair color: \_\_\_\_\_ Brown \_\_\_\_\_ Sex: \_\_\_\_\_ M \_\_\_\_\_ Other: \_\_\_\_\_

Sworn to before me on this

\_\_\_\_\_ 1st day of \_\_\_\_\_ May, 2008

\_\_\_\_\_  
DONNA M. TIDINGS

NOTARY PUBLIC, State of New York  
No. 01T14898570, Qualified in Albany County  
Commission Expires June 15, 2011

\_\_\_\_\_  
Jessica Miller  
Invoice/Work Order # SP0804152

STATE OF NEW YORK )

SS.:

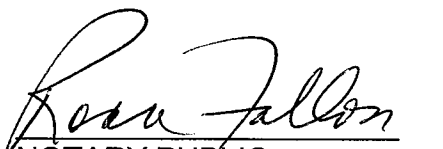
COUNTY OF NEW YORK )

RICH GAGE, being sworn, says: I am not a party to the action, am over 18 years of age and reside in Brooklyn, New York. On the 25<sup>th</sup> day of April, 2008, I served plaintiffs' **SUMMONS and COMPLAINT and JUDGES' RULES** to the following party by depositing a true copy thereof in a post-paid wrapper, registered mail with return receipt requested, in an official depository under the exclusive care and custody of the United States Postal Service within New York State, addressed to the following persons at the last known address set forth after each name below:

TO: Rodgers Construction & Home Improvement  
518 North Cascade Street  
New Castle, PA 16101

  
RICH GAGE

Sworn to before me this  
9<sup>th</sup> day of May, 2008

  
NOTARY PUBLIC  
ROSA FALLON  
Commissioner of Deeds  
City of New York - No. 2-12032  
Qualified in Kings County  
Commission Expires Jan 01, 2010



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS PENSION FUND, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS WELFARE  
FUND, NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS VACATION FUND, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS ANNUITY  
FUND, NEW YORK CITY DISTRICT COUNCIL  
OF CARPENTERS APPRENTICESHIP, JOURNEYMAN  
RETRAINING, EDUCATIONAL AND INDUSTRY  
FUND, NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS CHARITY FUND, and THE NEW YORK  
CITY AND VICINITY CARPENTERS LABOR  
MANAGEMENT COOPERATION FUND, by  
MICHAEL J. FORDE, and PAUL O'BRIEN, as TRUSTEES  
and MICHAEL J. FORDE AS EXECUTIVE  
SECRETARY-TREASURER, DISTRICT COUNCIL FOR  
NEW YORK CITY AND VICINITY, UNITED  
BROTHERHOOD OF CARPENTERS AND JOINERS,  
OF AMERICA,

08 CV 3799 (SAS)  
ECF CASE

**CLERKS**  
**CERTIFICATE**

Plaintiffs,

-against-

RODGERS CONSTRUCTION & HOME IMPROVEMENT,  
Defendant.

-----X

I, J. MICHAEL MCMAHON, Clerk of the United States District Court for the Southern District of New York, do hereby certify that this action commenced on April 22, 2008 by filing of the Summons and Complaint, and a copy of the Summons and Complaint having been served on the defendant, Rodgers Construction & Home Improvement, on April 28, 2008, by delivering one (1) true copy thereof to Chad Matice, an authorized clerk in the Office of the Secretary of State of the State of New York, and proof of service being filed on May 14, 2008, and by registered mail to Rodgers Construction & Home Improvement, 518 North Cascade Street, New Castle, PA 16101 on April 25, 2008, and proof of service being filed on May 14, 2008.

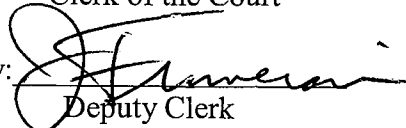
I further certify that the docket entries indicate that the defendant has not filed an answer or otherwise moved with respect to complaint herein. The default of the defendant is hereby noted.

Dated: 5/22/08  
New York, New York

**J. MICHAEL MCMAHON**

Clerk of the Court

By:

  
Deputy Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS PENSION FUND, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS WELFARE  
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CARPENTERS APPRENTICESHIP, JOURNEYMAN  
RETRAINING, EDUCATIONAL AND INDUSTRY  
FUND, NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS CHARITY FUND, and THE NEW  
YORK CITY AND VICINITY CARPENTERS  
LABOR MANAGEMENT COOPERATION FUND,  
by MICHAEL J. FORDE and PAUL O'BRIEN,  
as TRUSTEES, and MICHAEL J. FORDE, as EXECUTIVE  
SECRETARY-TREASURER, DISTRICT COUNCIL  
FOR NEW YORK CITY AND VICINITY, UNITED  
BROTHERHOOD OF CARPENTERS AND JOINERS  
OF AMERICA,

08 CV 3799 (SAS)  
ECF CASE

**AFFIDAVIT OF  
SERVICES**

Plaintiffs,

-against-

RODGERS CONSTRUCTION & HOME IMPROVEMENT,

Defendant.

-----X  
STATE OF NEW YORK                    )  
  :SS.:  
COUNTY OF NEW YORK                )

ANDREW GRABOIS, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and am associated with the firm of O'Dwyer & Bernstien, LLP, attorneys for plaintiffs herein and submit this affidavit in support of the instant application for default judgment and order.

2. On April 21, 2008, Rich Gage, a paralegal in this office, drafted and revised a complaint, cover sheet and other required documents. He spent 0.5 hours on this matter at a billing rate of \$125.00 per hour for a total of \$62.50 in attorneys' fees.

3. On April 21, 2008, your deponent reviewed and finalized the aforementioned documents. I spent 0.5 hours at a billing rate of \$350.00 per hour for a total of \$175.00 in attorneys' fees.

4. On April 22, 2008, Mr. Gage prepared and filed the aforementioned documents with the Clerk of the Court. He spent 1.0 hours at a billing rate of \$125.00 per hour for a total of \$125.00 in attorneys' fees.

5. On April 22, 2008, Mr. Gage prepared and filed the aforementioned documents on the Electronic Case Filing system. He spent 0.5 hours on this matter at a billing rate of \$125.00 per hour for a total of \$62.50 in attorneys' fees.

6. On April 22, 2008, Mr. Gage prepared and mailed the aforementioned documents for service of process through the Department of State. He spent 0.5 hours on this matter at a billing rate of \$125.00 per hour for a total of \$62.50 in attorneys' fees.

7. On April 25, 2008, Mr. Gage prepared and mailed the aforementioned documents for service of process registered mail. He spent 1.0 hours on this matter at a billing rate of \$125.00 per hour a total of \$125.00 in attorneys' fees.

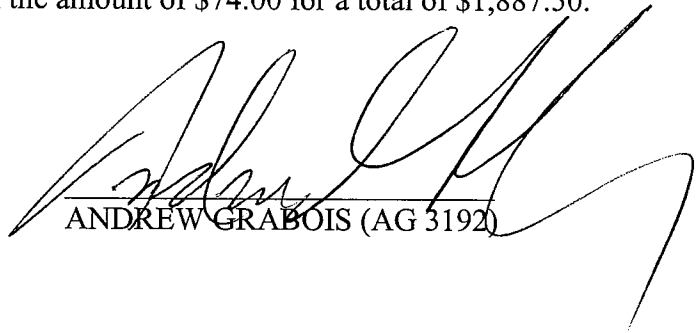
8. On May 14, 2008, Mr. Gage prepared and filed the affidavits of service with the Court and on the ECF system. He spent 1.0 hours on this matter at a billing rate of \$125.00 per hour for a total of \$125.00 in attorneys' fees.

9. On May 27, 2008, Ian Henderson, a paralegal in this office, drafted the required default documents, including a proposed judgment and order and affidavit of services rendered. He spent a total of 4.0 hours on this matter at a billing rate of \$200.00 per hour for a total of \$800.00 in attorneys' fees.

10. On May 27, 2008, your deponent reviewed and finalized the aforementioned default documents. I spent 0.5 hours on this matter at a billing rate of \$350.00 per hour for a total of \$175.00 in attorneys' fees.


11. The cost of the process server to effectuate service of process was \$74.00.

WHEREFORE, deponent respectfully requests allowance of attorneys' fees in the sum of \$1,712.50 and costs arising out of this action in the amount of \$74.00 for a total of \$1,887.50.



ANDREW GRABOIS (AG 3192)

Sworn to before me this  
27<sup>th</sup> day of May, 2008



NOTARY PUBLIC

**ROBERT DUNNE**  
**Notary Public, State of New York**  
**No. 02DU6115098**  
**Qualified in New York County**  
**Commission Expires August 30, 2008**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE NEW YORK CITY DISTRICT COUNCIL  
OF CARPENTERS PENSION FUND, NEW  
YORK CITY DISTRICT COUNCIL OF  
CARPENTERS WELFARE FUND, NEW YORK  
CITY DISTRICT COUNCIL OF CARPENTERS  
VACATION FUND, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS  
ANNUITY FUND, NEW YORK CITY DISTRICT  
COUNCIL OF CARPENTERS APPRENTICESHIP,  
JOURNEYMAN RETRAINING, EDUCATIONAL  
AND INDUSTRY FUND, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS CHARITY  
FUND, and THE NEW YORK CITY AND VICINITY  
CARPENTERS LABOR-MANAGEMENT  
COOPERATION FUND, by MICHAEL J. FORDE  
and PAUL O'BRIEN, as TRUSTEES, and MICHAEL J.  
FORDE, as EXECUTIVE SECRETARY-TREASURER,  
DISTRICT COUNCIL FOR NEW YORK CITY AND  
VICINITY, UNITED BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA,

08 CV 3799 (SAS)  
ECF CASE

**DEFAULT JUDGMENT**

Plaintiffs,

-against-

RODGERS CONSTRUCTION & HOME IMPROVEMENT,

Defendant.

-----X

This action having been commenced on April 22, 2008 by the filing of a Summons and Complaint, and a copy of the Summons and Complaint having been served on the defendant Rodgers Construction & Home Improvement on April 28, 2008 by delivering one (1) true copy of the same to the Secretary of the State of New York, pursuant to Section 307(b) of New York Business Corporation Law, and a proof of service having been filed on May 14, 2008, and by registered mail on April 25, 2008, and proof of service having been filed on May 14, 2008, and the defendant not having answered

the Complaint, and the time for answering the Complaint having expired, and the Clerk of the Court having issued its certificate of default on May 22, 2008, it is

ORDERED, ADJUDGED AND DECREED: That the Plaintiff have judgment against Defendant, pursuant to the arbitration award, in the principal amount of \$41,750.22 plus interest of ten percent (10%) per annum from the date of said award, March 24, 2008, through the date of entry of this judgment, totaling \_\_\_\_\_, in addition to attorneys' fees and costs in the amount of \$1,887.50 for a total of \_\_\_\_\_.

Dated: \_\_\_\_\_  
New York, New York

\_\_\_\_\_  
Honorable Shira A. Scheindlin  
United States District Judge

This document was entered on the docket  
on \_\_\_\_\_.

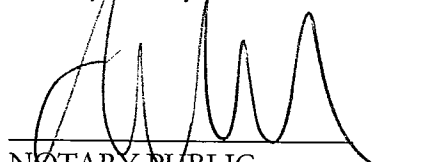
STATE OF NEW YORK     )  
                                      :SS.:  
COUNTY OF NEW YORK    )

IAN K. HENDERSON, being duly sworn, deposes and says: I am not a party to the action, am over 18 years of age and reside in Brooklyn, New York. On the 28<sup>th</sup> day of May, 2008, I served plaintiffs' **NOTICE OF MOTION and SUPPORTING DOCUMENTATION** to the following party by depositing a true copy thereof in a post-paid wrapper, in an official depository, under the exclusive care and custody of the United States Postal Service within New York State, addressed to the following person at the last known address set forth after the name below:

TO:    Rogers Construction & Home Improvement.  
      518 North Cascade Street  
      New Castle, PA 16101

  
\_\_\_\_\_  
IAN K. HENDERSON

Sworn to before me this  
28<sup>th</sup> day of May, 2008

  
\_\_\_\_\_  
NOTARY PUBLIC

**ANDREW GRABOIS**  
**Notary Public, State of New York**  
**No. 02GR6127051**  
**Qualified in New York County**  
**Commission Expires May 23, 2009**